

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DB STRUCTURED PRODUCTS, INC.,

Plaintiff,

-against-

BALTIMORE AMERICAN MORTGAGE
CORPORATION, INC.,

Defendant.

ECF CASE

07 Civ. 4109 (DLC)(KNF)

PROPOSED CONCLUSIONS OF LAW

1. Henry Biegacz was authorized to execute the Seller Loan Purchase Agreement dated July 29, 2004 between Plaintiff and Defendant (“Agreement”), attached as Exhibit 1 to the Complaint and submitted herewith as Exhibit A to the declaration of Brendan Zahner dated May 21, 2008 (“Zahner Decl.”). (*See* Plaintiffs’ First Set of Requests for Admissions and Defendant’s Responses to Plaintiffs’ First Set of Requests for Admissions (“RFA”) at ¶ 2, submitted herewith as Exhibit B to the Zahner Decl.)

2. The Agreement was a valid and enforceable contract between Defendant and Plaintiff at the time Defendant sold each of the loans listed on Exhibit 2 to the Complaint and submitted herewith as Exhibit C to the Zahner Decl. (the “Early Payment Default Loans”). (RFA at ¶ 3)

3. The sale of loans by Defendant to Plaintiff under the Agreement was subject to the terms and conditions found in the Deutsche Bank Correspondent Lending Seller Guide, as amended from time to time (the “Seller Guide”). (Exhibit A at Recitals and ¶¶ 1 and 3)

4. Under the Seller Guide, Defendant was obligated to repurchase the Early Payment Default Loans at the Repurchase Price, which is the sum of 1) the unpaid principal balance at the time of repurchase; 2) accrued and unpaid interest on the unpaid principal balance; and 3) all out-of-pocket expense and costs incurred by Plaintiff and or the servicer of the Early Payment Default

Loans, including repairs, foreclosure, insurance costs and attorneys' fees. (Exhibit D to the Zahner Decl. at p. 1-32).

5. The Defendant breached the Agreement and the Seller Guide by failing to repurchase the Early Payment Default Loans.

6. Pursuant to the Agreement and the Seller Guide, Defendant agreed to indemnify, defend and forever hold harmless Plaintiff, from and against any and all liabilities, loss, injury or damages, judgments, claims, demands, actions or proceedings, together with all reasonable costs and expenses relating thereto (including but not limited to attorneys' fees) by whomever asserted, relating to Defendant's breach of a representation, warranty, covenant, agreement or obligation of Defendant under the Agreement. (Exhibit D to the Zahner Decl. at p. 1-35).

7. Defendant has breached the representations and warranties in the Agreement and in the Seller Guide that Defendant would repurchase the Early Payment Default Loans from Plaintiff. As a result, Defendant owes Plaintiff indemnification for all losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments and any other costs, fees and expenses that Plaintiff may sustain.

Dated: New York, New York
May 21, 2008

THACHER PROFFITT & WOOD LLP

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